
DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric
Administration**

50 CFR Part 642

[Docket No. 930819-3219; I.D. 081793B]

**Coastal Migratory Pelagic Resources
of the Gulf of Mexico and South
Atlantic**

AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic
Atmospheric Administration (NOAA),
Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes changes in the management regime for the Gulf of Mexico migratory group of king mackerel in the eastern zone, in accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). Specifically, this rule proposes trip limits for Gulf group king mackerel in each of two sub-zones of the eastern zone, the Florida east coast and Florida west coast sub-zones, which are being created by a separate rulemaking. The intended effects of this rule are to reduce daily catches, thus preventing market gluts and extending the season, and to reduce the likelihood of exceeding the king mackerel quotas.

DATES: Written comments must be received on or before September 24, 1993.

ADDRESSES: Comments may be mailed to Mark F. Godcharles, Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Requests for copies of the regulatory impact review/initial regulatory flexibility analysis/environmental assessment supporting this action, and of a minority report submitted by three members of the Gulf of Mexico Fishery

Management Council (Gulf Council) objecting to this action, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609-2486, 813-228-2815.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP. The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and is implemented through regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

During the last fishing year (July 1, 1992, through June 30, 1993), the commercial quota for king mackerel from the eastern zone of the Gulf of Mexico migratory group was reached, and the fishery was closed on January 13, 1993, before fishermen on the east coast of Florida could harvest an equitable share. (During the period November 1 through March 31 each fishing year, the eastern zone of Gulf migratory group king mackerel extends from a line directly south from the Alabama/Florida boundary (87°31'06"W. longitude) to a line directly east from the Volusia/Flagler County, Florida, boundary (29°25'N. latitude).) Disproportionate catches between Florida's east and west coast fisheries were caused, in part, by a Federal Court ruling that prevented Florida from enforcing its trip/landing limits and regional closures that would have divided equally the Federal eastern zone quota of Gulf group king mackerel between Florida's east and west coast commercial fisheries. The early fishery closure caused a record low catch of king mackerel in the east coast fishery. The record low catch was determined to constitute social and economic emergencies. The South Atlantic Fishery Management Council requested, and NMFS implemented, an emergency interim rule (58 FR 10990, February 23, 1993) to reopen the commercial king mackerel fishery in the EEZ off the east coast of Florida between the Volusia/Flagler and Dade/Monroe County boundaries from February 18, 1993, through March 26, 1993, under a possession limit of 25 fish per vessel per day.

The conditions that precipitated the social and economic emergencies during the last fishing year continue to exist.

The Councils have initiated action to address these conditions. Specifically, the Councils have proposed trip limits applicable to the commercial harvest of king mackerel from the eastern zone and the establishment of separate, equal quotas for Florida's east coast and west coast fisheries. However, the equal-quota measure requires an amendment to the FMP, which cannot be completed and implemented in time for the 1993/94 winter fishery beginning November 1, 1993, by means other than emergency rule. Accordingly, the Gulf Council requested, and NMFS is processing, an emergency interim rule to create sub-zones and implement quotas of 865,000 pounds (392,351 kg) for each of the Florida east coast and Florida west coast fisheries.

Under the FMP's framework procedure for amending certain management measures, the Gulf Council, with the concurrence of the South Atlantic Fishery Management Council, has proposed that vessel trip limits be established for the harvest of Gulf group king mackerel from each of the two sub-zones of the eastern zone. The Florida east coast sub-zone would encompass the waters off the east coast of Florida from a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude) to a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25'N. latitude). The Florida west coast sub-zone would encompass the waters off the southeast, south, and west coasts of Florida from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude) to a line extending directly south from the Alabama/Florida boundary (87°31'06"N. latitude).

In the Florida east coast sub-zone, the Gulf Council recommends daily vessel possession and landing limits of 50 king mackerel until 432,500 pounds (196,181 kg) of king mackerel (50 percent of the sub-zone quota that is expected to be implemented by emergency rule) have been harvested from the sub-zone, at which time the daily vessel possession and landing limit would be 25 king mackerel. The 25-fish limit would remain in place until 865,000 pounds (392,351 kg) of king mackerel (the sub-zone quota that is expected to be implemented by emergency rule) have been harvested from the sub-zone and the commercial king mackerel fishery in the sub-zone is closed.

Since 1985, Gulf migratory group king mackerel in the winter fishery off the Florida east coast have been harvested primarily by small hook-and-line troll vessels. Approximately 150 fishermen operate in this fishery and are

dependent almost entirely on the winter king mackerel fishery, as they have few alternative fisheries available to them. The trip limits proposed in this rule would extend the fishing season and would maximize the economic benefits by preventing market gluts and the resulting lower prices. In addition, reduced daily trip limits would enhance quota monitoring so that the fishery could be closed in a timely manner when the Florida east coast sub-zone quota was reached.

In the Florida west coast sub-zone, the Gulf Council recommends unlimited daily vessel possession and landing limits of king mackerel until 648,750 pounds (294,271 kg) of king mackerel (75 percent of the sub-zone quota that is expected to be implemented by emergency rule) have been harvested from the sub-zone, at which time the daily vessel possession and landing limit would be 50 king mackerel. The 50-fish limit would remain in place until 865,000 pounds (392,351 kg) of king mackerel (the sub-zone quota that is expected to be implemented by emergency rule) have been harvested from the sub-zone and the commercial king mackerel fishery in the sub-zone is closed.

In recent years, Gulf migratory group king mackerel in the winter fishery off the Florida southeast, south, and west coasts have been harvested by both net boats and by small hook-and-line troll vessels. To maintain the approximate split between these two harvesting methods, the Florida west coast sub-zone would have no daily vessel trip limits until 75 percent of the sub-zone quota was reached. Both net boats and the small hook-and-line troll vessels would be able to operate effectively until the 50-fish trip limit was implemented. Because net boats cannot operate effectively at such trip limits, the remainder of the available harvest would be expected to be taken primarily by the small hook-and-line troll vessels. Under the 50-fish trip limit, the remainder of the fishing season would be extended, market gluts and resultant lower prices would be prevented, and the fishery could be closed in a timely manner when the Florida west coast sub-zone quota was reached.

The recommended changes are within the scope of the management measures that may be adjusted by the framework procedure, as specified at 50 CFR 642.29. The Director, Southeast Region, NMFS, initially concurs that the Councils' recommendations are necessary to protect Gulf group king mackerel and prevent overfishing and that they are consistent with the goals and objectives of the FMP. Accordingly,

the Council's recommended changes are published for comment.

The sub-zones and quotas to which the trip limits would apply are being implemented by the emergency rule procedure of section 305(c) of the Magnuson Act. The trip limits of this rule would apply when the eastern zone of Gulf group king mackerel is separated into Florida east coast and Florida west coast sub-zones and separate quotas are established in each. Under the emergency rule, the sub-zones and quotas will not be effective beyond March 31, 1994.

A minority report submitted by three members of the Gulf Council objected to this framework regulatory amendment. Specifically, the three members objected to the implementation of the 50-fish, early season trip limit in the Florida east coast zone because they contend that it provides an unfair economic allocation and prevents participation of net fishermen. NMFS will address the matters contained in the minority report, and comments received during the public comment period, in the final rule. Copies of the minority report are available (see ADDRESSES).

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291 because the total impact is well under the threshold level of \$100 million used as a guideline for a "major rule."

The Councils prepared a regulatory impact review (RIR) on this action, the conclusions of which are summarized as follows. With the proposed trip limits in the Florida east coast sub-zone, (1) king mackerel would command higher prices; (2) the effects in terms of producer surplus are inconclusive; (3) the direction of the effects on total consumer benefits is unknown, but changes in consumer surplus would be small; (4) there would be relatively higher full-time equivalent employment; and (5) the cost of the management action, including the increased costs of enforcing the trip limits, would approximate \$121,208. The analysis did not reach a conclusion as to the likely changes in overall net benefit. With the proposed trip limits in the Florida west coast sub-zone, (1) there would be relatively higher prices for king mackerel; (2) there would likely be no changes in producer or consumer surplus; and (3) there would likely be positive changes in overall net benefit.

Copies of the RIR are available (see ADDRESSES).

The Councils prepared an initial regulatory flexibility analysis (IRFA), which concludes that this proposed rule, if adopted, will have significant effects on small entities. The proposed trip limits are expected to increase the benefits for some participants in the industry and decrease the benefits for other participants. Overall, benefits are expected to be increased. All participants in the industry are small entities. Copies of the IRFA are available (see ADDRESSES).

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 2, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.7, a new paragraph (u) is added to read as follows:

§ 642.7 Prohibitions.

* * * * *

(u) In the eastern zone, possess or land Gulf group king mackerel in or from the EEZ in excess of an applicable trip limit, as specified in § 642.31(a), or transfer at sea such king mackerel, as specified in § 642.31(e).

* * * * *

3. A new § 642.31 is added, to read as follows:

§ 642.31 Commercial trip limits for Gulf group king mackerel in the eastern zone.

The provisions of this section apply when the eastern zone of Gulf group king mackerel is separated into Florida east coast and Florida west coast zones and separate quotas are established in each. See § 642.25(a)(1) for such zones and quotas.

(a) Trip limits.

(1) *Florida east coast zone.* In the Florida east coast zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for

which a commercial permit has been issued for king and Spanish mackerel under § 642.4.

(i) From November 1, each fishing year, until 50 percent of the zone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day; and

(ii) From the date that 50 percent of the zone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast zone has been effected under § 642.26—in amounts not exceeding 25 king mackerel per day.

(2) *Florida west coast zone.* In the Florida west coast zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4.

(i) From July 1, 1993, until 75 percent of the zone's fishing year quota of king mackerel has been harvested—in unlimited amounts of king mackerel; and

(ii) From the date that 75 percent of the zone's fishing year quota of king mackerel has been harvested until a closure of the Florida west coast zone has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

(b) *Notice of trip limit changes.* The Assistant Administrator, by filing a notice with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a)(1) and (a)(2) when the requisite harvest levels have been reached or are projected to be reached.

(c) *Closures.* A closure of the Florida east coast zone or the Florida west coast zone will be effected as specified in § 642.26(a). During the period of effectiveness of such a closure, the provisions of § 642.26(b) apply.

(d) *Combination of trip limits.* A person who fishes in the EEZ may not combine a trip limit of this section with any trip or possession limit applicable to state waters.

(e) *Transfer at sea.* A person for whom a trip limit specified in paragraph (a)(1) or (a)(2)(ii) of this section applies may not transfer at sea from one vessel to another a king mackerel—

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such king mackerel was taken.

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